

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	
To: The Commission		

**JOINT COMMENTS OF NATIVE PUBLIC MEDIA AND
THE NATIONAL CONGRESS OF AMERICAN INDIANS
NOTICE OF PROPOSED RULEMAKING**

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December 16, 2010

**NATIONAL CONGRESS OF
AMERICAN INDIANS**

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SUMMARY

NPM and NCAI applaud the Commission's creation of a Mobility Fund and believe that it would advance the goals of the National Broadband Plan. NPM and NCAI are, however, concerned that if adopted as proposed the Mobility Fund could fail to achieve its primary goal of bringing broadband and wireless services to unserved and underserved areas. The Mobility Fund should not be used solely to subsidize service to highways and to areas that can be served cheaply because they are adjacent to areas that are already well served.

To remedy these potential defects, the Commission should set aside one-third of the available funds as a Tribal Mobility Fund and establish separate procedures to assure that the Mobility Fund will be used to serve Tribal lands and anchor institutions central to Tribal sovereignty.

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Native Public Media ("NPM") and the National Congress of American Indians ("NCAI") respectfully submit these Comments in response to the above-referenced Notice of Proposed Rulemaking ("*NPRM*").¹

I. INTRODUCTION

As an organization dedicated to community broadcasting, NPM represents the interests of thirty-three Native owned public radio stations that serve Native nations as well as non-Native listeners throughout the United States.² Since its launch in 2004, NPM's principal focus has been on supporting existing Native American public radio stations and promoting ownership for more Native communities by serving as an advocate, national coordinator, and resource center.

¹ *In the Matter of Universal Service Reform, Mobility Fund, Notice of Proposed Rule Making*, ("*Mobility Fund NPRM*"), FCC 10-182, released October 14, 2010. The NPRM called for comments to be filed 45 days after publication in the Federal Register. The *Mobility Fund NPRM* appeared in the Federal Register on November 1, 2010. 75 Fed. Reg. 67060 (November 1, 2010).

² NPM, formerly known as the "Center for Native American Public Radio," is a project of the National Federation of Community Broadcasters, supported by a grant from the Corporation for Public Broadcasting. A list of the NPM member stations can be found at http://www.nativepublicmedia.org/index.php?option=com_content&task=view&id=26&Itemid=48.

Advocating on behalf of member Tribes from across the entire United States, in consensus based decision making, NCAI is a forum for federal-tribal policy on major issues confronting Native peoples, including the myriad challenges of communications access and deployment. NCAI coordinates with the Commission on a number of Tribal outreach and education efforts. NPM and NCAI have co-hosted several of the Commission's Indian Telecommunications Initiatives ("ITI") regional workshops and roundtables. NCAI co-hosts with the Commission the annual "FCC-NCAI Dialogue on Increasing Tribal Telecommunication," between Commission officials and members of the NCAI Telecommunications Subcommittee.

Since the creation of NCAI's Telecommunications Subcommittee in 2001, NCAI has adopted many resolutions that articulate national policy positions on the deployment of telecommunications, broadcast and broadband services throughout Indian Country. NPM is an active participant in NCAI's Telecommunications Subcommittee. Both NPM and NCAI appreciate the Commission's efforts to assist tribes in developing communications policies and are pleased to submit these joint comments to the Commission.

Appended hereto as Attachment A is NCAI Resolution #ABQ-10-061, "Congress and Federal Agencies Must Create the Native Broadband Fund, and Devote and Prioritize Funding and Resources to Provide Broadband in Native Communities and Include Native Governments in All Native Telecommunications Infrastructure and Broadband Policy Initiatives," adopted November 19, 2010, at the Annual Conference of the National Congress of American Indians in Albuquerque, NM ("NCAI Native Broadband Fund Resolution").

There are 4.1 million American Indians and Alaska Natives ("Indians" or "Native Americans") in the United States and 565 federally recognized American Indian Tribes and Alaska Native Villages ("Tribes" or "Tribal Nations"), all inherently sovereign government

entities with their own political and Tribal structures. The National Broadband Plan (“NBP”)³ recognized the unique plight of Native Americans, the vast majority of whom live on the other side of the “Digital Divide.” Indeed, most live on the far end of the Digital Divide, in some of the most remote and impoverished areas of the United States.

Today, approximately 90 percent of Native Americans living in Indian Country do not have high-speed access to the internet. The economic, cultural and human significance of that fact cannot be underestimated. Connecting Indian Country with the rest of the world can reverse centuries of isolation and neglect. The NPB recognizes the principles of Tribal sovereignty and self-determination and the importance of enabling Tribal Nations to shape the future health and welfare of their communities with this critical infrastructure. Broadband has the potential to assist Native American people in securing their rightful place in a world economy of ideas and opportunities.

NPM and NCAI believe that the FCC now has a better understanding of the needs and opportunities for Indian Country than at any time in recent memory. The needs of Indian Country are no longer a footnote. Concepts such as a “tribal-centric” deployment models and “core community institutions” are becoming part of the Commission’s vocabulary. The Commission now understands that traditional carriers, for whatever reason, have often stopped infrastructure deployment at the borders of Indian Country, regardless of whether those borders are in remote areas or adjacent to highly populated areas.

The *NPRM* proposes to set aside between \$100 million and \$300 million from the Universal Service Fund (USF) for a Mobility Fund “to provide an initial infusion of funds toward solving the persistent gaps in mobile services through targeted, one-time support for the

³ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, (rel. Mar. 16, 2010) (“NBP”).

build-out of current and next-generation wireless infrastructure in areas where these services are unavailable.”⁴ The Commission proposes to implement the Mobility Fund through a reverse-auction process, where the funds would be granted to providers seeking the least amount of support per “unit” of population.⁵ The Commission also seeks comment on whether it should “reserve funds for developing a Mobility Fund support program targeted separately to Tribal lands that trail national 3G coverage rates.”⁶

II. ESTABLISHING A SEPARATE TRIBAL MOBILITY FUND IS CRITICAL

A. The Need on Tribal Lands is Well Documented.

The *NPRM* documents the lack of telecommunications services on Tribal lands, especially the lack of availability of 3G mobile service⁷ and echoes conclusions reached in the NBP.⁸ As the *NPRM* states, “Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges.”⁹ The *NPRM* succinctly summarizes the multiple challenges faced by Tribes as they attempt to cross the “Digital Divide”:

The National Broadband Plan observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning.¹⁰

⁴ *Mobility Fund NPRM*, ¶. 5.

⁵ *Id.* at ¶ 11.

⁶ *Id.* at ¶ 33.

⁷ *Id.*

⁸ See *National Broadband Plan* at 152, citing *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11,794, 11,798 (2000).

⁹ *Mobility Fund NPRM*, ¶ 33.

¹⁰ *Id.* at ¶ 33, fn. 42.

Yet the *NPRM* fails to grasp how wide the divide actually is. As NPM and NCAI pointed out in their joint comments in the National Broadband Proceeding, the lack of broadband access exists on Tribal lands even where they are adjacent to well-served areas.¹¹ Historically, many carriers have ended their wireline deployment at the borders of Tribal lands.¹² In other instances, wireless carriers have spectrum covering Tribal lands but either have not built out facilities on Tribal lands, or have not actively marketed the service to Native Americans.¹³ This lack of service not only denies Native American equitable access to the on-ramps to the information economy, but may also deny them access to fundamental government services, such as 911. It has been estimated that the amount needed to fully close the Digital Divide is as much as \$3 billion.¹⁴ Given this grave need, NPM and NCAI applaud the *NPRM*'s proposal to use "recaptured" USF funds to jump-start mobile deployment in rural areas and Tribal lands.

NPM and NCAI, nonetheless, have grave concerns concerning how the proposed Mobility Fund will be implemented and therefore urge that at least one-third of the Mobility Fund be set aside for Tribal lands.

¹¹ See Native Public Media et al. Comments in re Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket 05-337, filed July 12, 2010, at 4.

¹² *Id.*

¹³ *Id.* at 9

¹⁴ See The National Broadband Plan: Deploying Quality Broadband Services To The Last Mile: Hearing before the Subcomm. On Communications, Technology and the Internet, 111th Cong. (2010) (statement of The Hon. Joe Garcia, Sokuwa Owing T'aa (Mark of the Misty Lake), Council Member, Ohkay Owingeh (formerly San Juan Pueblo) Southwest Area Vice President National Congress of American Indians, Chairman, All Indian Pueblo Council).

B. Use of a “Reverse Auction” Will Spur Deployment to the Least Rural Areas of the United States.

The *NPRM* proposes to utilize a “reverse auction” to allocate support from the Mobility Fund whereby carriers seeking the least amount of support would receive funding.¹⁵ As the *NPRM* states, “bidders would not want to overstate the support they require since they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning.”¹⁶ Application of this principle means that funds will be awarded to carriers who serve the *least* rural areas of the United States. If only those carriers who “low-ball” their bids win, carriers will bid only in areas where they can provide incremental service based on existing infrastructure (*e.g.*, existing towers, backhaul facilities, existing marketing outlets) that combine the least cost and most potential revenues. Carriers who can piggyback on existing facilities and established markets will receive an enormous advantage over other bidders.

The advantage given to those proposing incremental mobile build-outs is exacerbated by the proposed eligibility criteria. The *NPRM* estimates that 98.5% of the population has access to 3G services, and proposes to make funds available to any county where that percentage is at least three (3) percentage points below the national average.¹⁷ If all census blocks only 3 percentage points below the national average (presumably meaning every census block where less than 95.5% of the population therein has access to 3G services) are eligible, vast areas that already have service availability far greater than is found in Indian Country will receive funds. Absent a set aside for Tribal lands, Tribal lands will receive little. The Mobility Fund will go almost exclusively for fill-in service to areas already receiving better service than available in Tribal

¹⁵ *Mobility Fund NPRM*, ¶ 17.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 30.

lands. To subsidize carriers for filling in small gaps in coverage rather than bringing service to areas where there is no preexisting infrastructure or service would be a miscarriage on the fundamental purpose of the Mobility Fund. This approach will assure that anyone living on the other side of the Digital Divide will stay there.

C. There Appears to be a Strong Bias in Favor of Using the Mobility Fund to Fill in Gaps in Service to the National Highway System.

This “gap filling” mentality is also evidenced by what appears to be the Commission’s preference for using the Mobility Fund to improve service to mobile customers on the nation’s highway system. The *NPRM* is replete with references to this need and apparent desire to funnel most, if not all, of the Mobility Fund for this purpose.¹⁸ NPM and NCAI do not dispute that there are gaps in 3G coverage along major thoroughfares. They do, however, question whether offering high speed service to high speed travelers should be a higher priority than providing first

¹⁸ See, e.g., *Mobility Fund NPRM*, ¶ 9 (“The Joint Board also contemplated that funds would be available to construct facilities along roads and highways, to advance important public safety interests.”); ¶ 18 (“More specifically, as described in more detail below, we propose to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas (and perhaps other characteristics, such as road miles.”); ¶ 27 (“We propose at a minimum to establish the number of units in each unserved census block based on population. We also seek comment on whether we should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund. For example, should we utilize data compiled by the Department of Transportation (such as Traffic Analysis Zones) or data on community anchor institutions to establish the number of units in the census block that will be considered unserved?”); fn 36 (“We note that our proposal to require drive tests in order to demonstrate service (see para 40, *infra*), if adopted, would mean that providers receiving support would have to cover designated roads whether or not we decide to use road miles as a factor in determining the number of units in unserved blocks”); ¶ 40 (“We propose that the drive test would be conducted over all Interstate, US, and State routes in the area, as well as any other roads that the applicable State Agency regulating the provision of telecommunications services deems essential to service. We propose that drive test data satisfying the foregoing requirements should be submitted within two months of a site providing service or two years of the date support is first provided, whichever comes earlier.”); ¶ 42 (“We seek comment on how to determine the roads that must be included in any drive tests subject to review. Would it be sufficient to cover Interstates, US Routes, and State Routes? Do circumstances vary sufficiently from state to state or region to region such that different approaches should be adopted for different states? What parties are likely to have the best available information regarding what roads are most important for mobile coverage? Should those parties be involved in the process of determining the roads that must be included in the drive tests?”).

service of any kind to vast areas in Indian Country that are completely unserved. Image the irony of high tech people surfing the web from high tech SUVs as they whiz past Indian Country, which receives no service except along the new “information superhighway.” Instead of closing the Digital Divide, this proposal would exacerbate the differences between the “haves” and “have-nots.”

D. Given the Disparity of 3G Availability Between Indian Country and the Rest of the Nation, One-Third of the Mobility Fund should be Set Aside for Carriers Proposing to Service Indian Country.

Reverse auctions, combined with a preference for highway gap could quickly exhaust the Mobility Fund suggested in paragraph 33 of the *NPRM*. If the Commission wishes to close the digital divide, then a substantial part of the Mobility Fund must be set aside for a Tribal Mobility Fund. NPM and NCAI therefore recommend that one-third (1/3) of the Mobility Fund be reserved as a “Tribal Mobility Fund” and made available only to providers who propose service predominantly to Tribal lands and commit to marketing the service to Native Americans.

E. The Tribal Mobility Fund must be used to Serve Native Americans, not just Mobile Users Traversing Tribal Lands.

If it is to achieve its purpose of serving Native Americans rather than Interstate highways, grants from the Tribal Mobility Fund must not be awarded to carriers who predominantly wish to provide service to roads that bisect Indian Country. Any applicant for funding from the Tribal Mobility Fund must be required to demonstrate how the funding will be used to deliver high speed mobile service to people who live on Tribal lands. Proposals that seek support for service along highways should be ineligible for funding from the Tribal Mobility Fund.

An application seeking funding from the Tribal Mobility Fund should demonstrate that Tribal governments have been consulted and engaged in the planning process and that the service

provided will advance goals established by the Tribe.¹⁹ Preferences should be given to carriers who propose to serve all, or a significant majority, of the population of any Tribal lands seeking support from the Tribal Mobility Fund.²⁰ Finally, priority should be given to applicants that propose service to Tribal anchor institutions, rather than solely to residential or business users.

F. Reverse Auctions May Not Work For Allocating the Tribal Mobility Fund.

The challenges faced by Tribes in bringing service to their people are vastly different from the challenges faced by the rest of rural America. Cultural and language differences differentiate Indian Country. Traditional economic drivers have proven ineffective in bringing telecommunications services to Indian Country. A reverse auction model, which is inherently based on profit/loss economics, may not benefit Native Americans or help close the Digital Divide.

An application seeking funding from the Tribal Mobility Fund should therefore demonstrate how the carrier will make the service available to the population to be covered, including demonstrations that Tribal governments have been included in the planning, education and marketing of the service. Preferences should be given to carriers that propose to serve all, or a significant majority, of the population of a Tribe. Finally, priority should be given to carriers who propose service to Tribal anchor institutions, rather than focusing first on residential or

¹⁹ As the NCAI Native Broadband Fund Resolution points out, “incumbent mobility services are deployed in a haphazard and often illegal manner on Native lands (regarding rights of way permission, business and other permitting requirements, and failure to use Native labor)”.

²⁰ NPM and NCAI are aware of instances whereby Native Americans have been subject to large roaming charges to make mobile calls from one area of the reservation to another, especially for those reservations that cross state lines.

business deployment.²¹ None of these key needs are met if a strict “low bid” reverse auction is utilized.

G. The Tribal Consultation Process is Critical to Ensuring Advanced Mobile Services Actually Reach Native Americans.

The *NPRM* notes the unique status of Tribes and the responsibility of the federal government to consult with Tribes in adopting telecommunication policy impacting Tribal lands.

We have recognized that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government. In turn, we have reaffirmed our policy to promote a government-to-government relationship between the FCC and federally-recognized Indian tribes. Because this relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands, we believe addressing Mobility Fund support for Tribal lands on a separate track will be beneficial in providing adequate time to coordinate with American Indian Tribes and Alaska Native Village governments and seek their input.²²

NPM and NCAI call upon the FCC to use the government-to-government consultation process to full effect in designing and implementing the Tribal Mobility Fund. The Commission should convene, at the earliest opportunity, a series of workshops and other meetings with Tribes to get input as to how the Tribal Mobility Fund should be implemented. This consultative process must include engineering and technical assistance to Tribes that do not currently possess that capability. This effort will require that additional resources be provided to the FCC’s Office of Native Affairs and Policy (“the “Office”) within the Consumer Affairs Division. The Office quickly is

²¹ See, *Mobility Fund NPRM*, ¶ 27 (“Are there other factors that we should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? We ask that commenters address how we should measure the factors on which we seek comment as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as resident population, or whether such comparisons would be appropriate.”) In implementing the Tribal Mobility Fund, the FCC should consider the unique Tribal anchor institutions such as Chapter Houses and BIA facilities.

²² *Mobility Fund NPRM*, ¶ 33, citing, *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, (“Tribal Policy Statement”), 16 FCC Rcd 4078 (2000) (Tribal Policy Statement); and National Broadband Plan at 146.

becoming a respected advisor to Indian Country, and has done much in its short existence to engender faith that the FCC is as concerned about the interests of Native Americans as the interests of the carriers it regulates.

H. The Commission Should Consider Use of a “Tribal Priority” Within the Tribal Mobility Fund.

In assessing the best manner in which to manage and allocate the Tribal Mobility Fund, NPM and NCAI urge the Commission to consider implementing a “Tribal Priority” similar to the one recently adopted for new audio broadcast facilities.²³ Adoption of the FM Tribal Priority was a watershed moment in the annals of the relationship between the FCC and Indian Country.

A similar Tribal Priority for the Tribal Mobility Fund would give a priority to an applicant that is owned and controlled by a Tribe or a Tribally-controlled entity. Use of a “Mobility Fund Priority” would empower Tribes to serve their people and allay distrust of traditional carriers, who are seen by Indian Country as being profit-oriented, not service-oriented. Adopting a Mobility Fund Priority whereby access to the Tribal Mobility Fund would first be made available to Tribally-controlled carriers would have the huge economic benefit of ensuring that money flowing into reservations stays there. The unique status of Tribes as sovereign political entities allows and calls for unique treatment.²⁴ NPM and NCAI therefore strongly support the concept of a Mobility Fund Priority.

I. The “Separate Track” must not be the “Slow Track.”

The *Mobility NPRM*, calls for the Tribal Mobility Fund to be put on a “separate track.”²⁵ Although NPM and NCAI fully support the concept of a Tribal Mobility Fund, the FCC must not

²³ See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, RM-11528, 25 FCC Rcd 1583 (2010).

²⁴ *Id.* at ¶ 12.

²⁵ *Mobility Fund NPRM*, ¶ 33.

allow the “separate track” to become the “slow track.” Instead, as it did with the broadcast Tribal Priority, the Commission should “fast track” the Tribal Mobility Fund in a separate order.

III. Other Implementation Issues

A. Eligible Telecommunications Carriers (“ETC”).

NPM and NCAI support the proposal that any carrier seeking funding from the Tribal Mobility Fund be designated as a wireless Eligible Telecommunications Carrier (“ETC”) under Section 214(e) of the Act.²⁶ So as not to preclude the entrance of new carriers, and especially Tribally-controlled entrants, NPM and NCAI recommend that applications for the Tribal Mobility Fund be accepted from any carrier who has applied for ETC designation, with ultimate funding subject to obtaining ETC status. Such a procedure would facilitate a smooth implementation of the Tribal Mobility Fund, permit new entities to apply, and allow Mobility Fund applications to be processed while the FCC works through what could be a substantial backlog of ETC petitions.

NPM and NCAI also support the use of government-to-government consultation in the ETC process, whereby Tribes are invited to participate in mobile ETC designation proceedings where their concerns can be fully vetted. The FCC should provide engineering and technical assistance to Tribes in any ETC proceeding involving a carrier seeking to provide service to Tribal lands.

Finally, in the ETC process leading up to eligibility for access to the Tribal Mobility Fund, special scrutiny must be made of the carrier’s Lifeline and Link-Up proposals to make sure they are in the interests of the Tribe. Historically, the service offers made under Lifeline programs have often been inadequate when compared to neighboring service areas and have provided fewer minutes or higher roaming charges. Including Tribes in this analysis will go far

²⁶ *Mobility Fund NPRM*, ¶ 45.

to ensure that the services provided in Indian Country, supported by USF funds, meet the public interest and necessity.

B. NPM and NCAI Support Requiring Fund Recipients to Offer Reasonable Collocation Opportunities.

NPM and NCAI fully support the proposal contained in the *NPRM*, to require fund recipients to offer reasonable collocation opportunities.²⁷ As noted in the NCAI Native Broadband Fund Resolution, carriers who have obtained rights to build towers on Tribal lands, have sometimes exploited those rights as monopoly assets to keep out competition that could increase service and drive down prices for Native Americans. Any carrier receiving funding from the Tribal Mobility Fund should be required to offer reasonable collocation opportunities to competitive carriers, especially for Tribal, government and public safety uses. Competitive carriers should be allowed access based on actual cost of allocation minus the Tribal Mobility Fund support, and Tribal governments should be offered collocation opportunities at the marginal operating expense of housing the antennas and equipment, without regard to capital costs.

IV. CONCLUSION

NPM and NCAI applaud the Commission's creation of a Mobility Fund and believe that it would advance the goals of the National Broadband Plan. NPM and NCAI are, however, concerned that if adopted as proposed the Mobility Fund could fail to achieve its primary goal of bringing broadband and wireless services to unserved and underserved areas. The Mobility Fund should not be used solely to subsidize service to highways and to areas that can be served cheaply because they are adjacent to areas that are already well served.

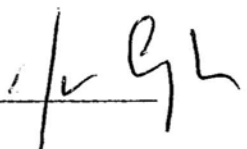
²⁷ *Mobility Fund NPRM*, ¶ 36.

To remedy these potential defects, the Commission should set aside one-third of the available funds as a Tribal Mobility Fund and establish separate procedures to assure that the Mobility Fund will be used to serve Tribal lands and anchor institutions central to Tribal sovereignty.

Respectfully submitted,

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December 16, 2010

**NATIONAL CONGRESS OF
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NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-10-061

TITLE: Congress and Federal Agencies Must Create the Native Broadband Fund, and Devote and Prioritize Funding and Resources to Provide Broadband in Native Communities and Include Native Governments in All Native Telecommunications Infrastructure and Broadband Policy Initiatives

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Broadband Initiatives Program (BIP), administered by the Department of Agriculture's Rural Utilities Service, and the Department of Commerce's National Telecommunications and Information Administration's Broadband Technology Opportunities Programs (BTOP) was established in the American Recovery and Reinvestment Act of 2009 (Recovery Act) has failed to provide a meaningful assistance to help tribal and native communities; and

WHEREAS, access to broadband service in poorly served areas will help bridge the technological divide, increase economic growth, and improve education, health care and the quality of life in these areas; and

WHEREAS, tribal areas are the most underserved and un-served communities in America with regard to telecommunications services with a telephone penetration rate lower than 70% and a broadband penetration rate less than 10%; and

WHEREAS, Native communities are the worst connected communities in America infrastructure and broadband capacity; and

WHEREAS, incumbent mobility providers have failed to serve to Native communities in parity with urban and non-Native communities; and

WHEREAS, incumbent wireless mobility providers have cherry-picked service only to the most populated rural, ignoring the mobility needs of less populated communities that remain unconnected; and

WHEREAS, the potential \$300 million Broadband Mobility Fund will be derived from the Universal Service Fund, that has the mandate to reach all communities, particularly those not being served in parity with urban or with other rural communities; and

WHEREAS, incumbent mobility services are deployed in a haphazard and often illegal manner on Native lands (regarding rights of way permission. Business and other permitting requirements, and failure to use Native labor); and

WHEREAS, the FCC has already adopted a policy to prioritize tribal nations for mass media licenses out of recognition of tribal sovereignty and tribal lack of public information access; and

WHEREAS, high speed wireless broadband capacity can be an essential safety-net for emergency service access in tribal broadband and infrastructure deprived regions; and

WHEREAS, the Federal Communications Commission recognizes that Native communities could be an important beneficiary for Broadband Mobility funds because of the unique circumstances of Native communities; and

WHEREAS, the federal government of the United States has a trust responsibility to tribal communities to ensure that they receive parity of infrastructure services with other American communities, and current market forces and governmental programs are not meeting the infrastructure needs of tribal communities; and

WHEREAS, the National Broadband Plan states that "Congress should consider additional annual funding for the FCC to expand the Indian Telecommunications Initiatives, Tribal workshops and roundtables to include sessions on education, technical support and assistance with broadband initiatives.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby strongly urge the FCC to preserve the underlying principles of support for high cost areas of providing vital infrastructure and broadband service; and

BE IT FURTHER RESOLVED, that NCAI oppose provisions of Broadband Mobility Funds to any entity that is not in compliance with tribal authority and federal law regarding siting permits, tribal employment and other such laws as may apply; and

BE IT FURTHER RESOLVED, that the NCAI supports that the National Broadband Plan must contain methods, resources, and specific priority for helping tribal and native communities attain connectivity and advanced technology in parity with non-tribal and non-native communities; and

BE IT FURTHER RESOLVED, that the NCAI supports that the FCC, Department of Agriculture, Department of Commerce and Congress must provide sufficient funding and technical assistance in a Tribal Broadband Fund and any Connect America Funds to help Indian nations attain broadband parity with non-native communities; and

BE IT FURTHER RESOLVED, that the NCAI recommends that the FCC and Congress preserve and expand the Enhanced Tribal Lands Lifeline and Linkup Program for remote infrastructure and broadband service to low income consumers in Indian Country; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC to set aside a sufficient amount of the Broadband Mobility Fund to deploy an essential safety-net 4G mobility network in underserved Native lands and communities; and

BE IT FURTHER RESOLVED, that the FCC should set aside sufficient frequency bandwidth to support the deployment of a 4G Native Safety-Net wireless broadband network to assist with communities emergencies and with community public service needs; and

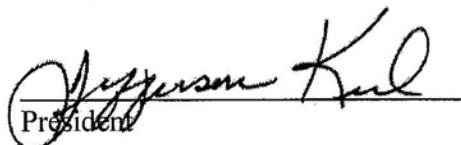
BE IT FURTHER RESOLVED, that NCAI urges the FCC to consult with the Native communities being targeted to ensure consumers' and subscribers' access needs and service concerns are being appropriately addressed; and

BE IT FURTHER RESOLVED, that the NCAI urges Congress to allocate and increase the amount of funding for federal initiatives to assist tribal telecommunications service, including the Department of Agriculture's Substantially Underserved Trust Area program; the Department of Commerce's Broadband Opportunity Program, and its Economic Development Administration funding program; the FCC's Office of Native Affairs and Policy and its Indian Telecommunications Initiatives Program; and its Department of Interior funding and assistance programs that can be used to assist broadband expansion in Native communities; and

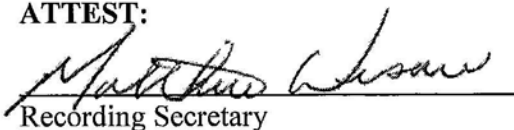
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2010 Annual Convention of the National Congress of American Indians, held at the Albuquerque Convention Center in Albuquerque, NM on November 14-19, 2010, with a quorum present.


President

ATTEST:


Recording Secretary